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SUMMARY RECORD OF THE 301st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 November 1997, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic report of Cyprus

ORGANIZATIONAL AND OTHER MATTERS (continued)

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

Second periodic report of Cyprus (CAT/C/33/Add.1; HRI/CORE/1/Add.28)

1. At the invitation of the Chairman, Mr. Eftychiov, Mrs. Koursoumba, Mr. Anastasiades, Mr. Christophides and Mr. Kestoras (Cyprus) took places at the Committee table.

2. Mr. EFTYCHIOY (Cyprus) said that the promotion and protection of human rights was a matter of the highest priority for the Government of a country whose people had contributed so much in ancient times to the development of modern democratic principles. The European Convention on Human Rights and the First Protocol thereto had served as prototypes for the relevant provisions of the Constitution of Cyprus, part II of which contained an extensive bill of rights. Cyprus had ratified all international human rights instruments for which monitoring bodies had been established. Such instruments had superior force to domestic law.

3. In connection with article 2, paragraph 1, of the Convention, he wished to stress that the second periodic report (CAT/C/33/Add.1) pertained only to the territory of the Republic under the effective control of the Government of Cyprus. Since 1974, 37 per cent of the territory of Cyprus had been under Turkish military occupation and the Government was therefore unable to enforce the provisions of the Convention in the entire territory under its jurisdiction.

4. Mrs. KOURSOUMBA (Cyprus) said she wished to report on developments during the period since the date of submission of the report. Law 77(1)/97, the Psychiatric Treatment Law, which had been enacted and had replaced the Mental Patients Law, adopted an entirely new approach to mental illness, assuming that mental disorders, with only a few exceptions, were curable.

5. Patients were treated in public and private centres on a voluntary or compulsory basis. Treatment was compulsory where an element of danger existed and was of fixed duration, with a procedure for determining whether it should be continued or terminated.

6. A Supervisory Committee had been established to oversee implementation of the Law and propose amendments where necessary, to make recommendations regarding the suitability of treatment centres, to inspect treatment and recuperation centres, to provide counselling on the Law and on patients' rights, to examine complaints regarding detention and treatment and to submit its findings and recommendations to the Minister, including recommendations regarding the cancellation of licences to operate treatment centres.

7. Where patients were unable to express their will freely, guardians were appointed. When a person suffering from a mental disorder was convicted in a criminal case, the court was empowered to issue a hospital order in lieu of other punishment. A patient's consent was required for any operative

treatment. Patients were free to communicate with persons outside the centre and had the right of access to its records unless adverse effects for themselves or for others might ensue.

8. The new Law was applied in the cases referred to in paragraph 5, subparagraphs (a) and (d), of the report. With regard to paragraph 5, subparagraphs (b) and (c), it was expected that a bill to amend section 70 of the Criminal Procedure Law (cap. 155) would be passed within a matter of days. Under the new version of section 70, if a court concluded that an accused person was incapable of following the proceedings owing to a mental disorder, it could order detention in a State psychiatric centre for a period of time analogous to that provided by Law 77 (1) of 1997 or placement in psychiatric care until the patient had sufficiently recovered to follow the proceedings.

9. Where a person was acquitted on the grounds of a mental disorder, the court was required to order detention in a State psychiatric centre for treatment. The original provisional order for compulsory confinement, mentioned in paragraph 7 of the report, was for two months and not three weeks.

10. With reference to paragraph 9 of the report, provision had been made in the 1998 budget for the establishment of a group hostel. In addition, day-care centres were operating in Nicosia, Limassol and Larnaca.

11. The Government's mental-health policy focused on shifting therapeutic services from the mental hospital to general hospitals and the community, providing comprehensive community-based services in all districts and improving living conditions for the inmates of the mental hospital. Admissions to the mental hospital had been reduced by almost two thirds between 1986 and 1996. Local mental-health facilities were being gradually expanded to meet the needs of local communities.

12. Under the 1996 Administration of the Property of Incapacitated Persons Law, mental patients were treated no differently from persons suffering from physical disorders which rendered them incapable of regulating their own affairs.

13. Following the consideration of the second periodic report of Cyprus to the Human Rights Committee in 1994 (CCPR/C/32/Add.18), a bill relating to the interpretation and implementation of international treaties and other related issues had been drafted. The matter was still under examination by the Government because the prospective establishment of a national institution for the promotion and protection of human rights would necessitate amendments to the bill to deal with the overlapping powers of the proposed institution and the council envisaged by the bill.

14. The human rights institution would provide information, assist in forming public opinion and advise the Government on human rights issues. It would review relevant legislation, case law and administrative arrangements and report to the competent authorities, make recommendations for harmonization of the legislation with international human rights treaties and liaise with similar institutions abroad. It would also examine complaints of human rights violations.

15. In the meantime, the problem of implementation of treaties was dealt with by including in any ratification law provisions whereby the self-executing provisions were declared to have that status and the non-self-executing provisions were supplemented by substantive provisions, for example by describing the penalty to be imposed for an offence under the treaty or including a provision conferring power to make regulations.

16. The new Prisons Law, No. 62(1)/96, had been amended by Law 12(1)/97 and general regulations for its implementation had been adopted.

17. The Commission of Inquiry on complaints of police ill-treatment of persons held in custody had highlighted the rigidity of the outdated Cypriot law of evidence. In some instances of unacceptable ill-treatment of individuals, the accused police officers had been acquitted because of the lack of admissible evidence to justify conviction under the old law. A bill recently submitted to the House of Representatives was designed to change the evidential system from the common-law approach to the Continental one so that all relevant evidence would be admissible subject to certain exclusionary provisions.

18. Although the bill was highly controversial, it was strongly supported by the Attorney-General. If it was passed, he would no longer be hindered from instituting criminal proceedings against persons accused of ill-treatment by the knowledge that relevant evidence would not be admissible in court. A second bill drafted by the Law Commissioner would be promoted if passage of the former bill was likely to be delayed. It would provide for the admissibility of statements as evidence if they were taken by an electronic recording system with all necessary safeguards. Video cassettes could be adduced as evidence-in-chief and for purposes of cross-examination.

19. The Commissioner for Administration (Ombudsman), had dealt with a number of complaints concerning ill-treatment. In 1994, one complaint had been found valid and the Attorney-General had authorized a private prosecution. In 1995, disciplinary proceedings instituted by the Chief of Police in the case of Charalambos Constantinou had been discontinued when the complainant had refused to give evidence before the Disciplinary Board. In the case of Salih Askeroglou, the complainant had been awarded compensation and legal costs in the light of the findings of a criminal investigator appointed by the Council of Ministers.

20. In the case of Erkan Egmez, the complainant refused to give evidence regarding his alleged ill-treatment and had filed an application to the European Commission of Human Rights. In response, the Government had submitted that Mr. Egmez had failed to exhaust domestic remedies because the Attorney-General was unable to prosecute without his evidence and because he had failed to bring a civil action for damages.

21. In 1996, the Commissioner for Administration had referred two cases to the Attorney-General. One was still under consideration and the other had been rejected because of the lack of sufficient evidence to justify prosecution. The Commissioner was preparing a report on a valid complaint filed in 1997.

22. Under a proposed amendment to the Commissioner for Administration Law, the Attorney-General would be empowered to order a prosecution on the basis of the Commissioner's report alleging that a criminal offence had been committed. If the amendment was passed, cases such as that of Erkan Egmez could be brought before the Criminal Court.

23. Law 51(1)/97 gave effect to the provisions of the European Convention on the Compensation of Victims of Violent Crimes.

24. The death penalty no longer existed de facto in Cyprus. A bill under consideration would expressly abolish that penalty and redefine the offences for which it had previously been imposed. The Attorney-General had recently proposed that Cyprus should ratify Protocol 6 to the European Convention on Human Rights.

25. Mr. BURNS (Country Rapporteur) complimented the Government of Cyprus on its reports that had effectively pre-empted almost every issue he had intended to raise. Cyprus had ratified virtually all the international human rights treaties, including their optional provisions, and, in the case of the Convention, had made the declarations under articles 21 and 22 and had not entered a reservation to article 20. It had also established domestic institutions to implement its international obligations.

26. He much appreciated the fact that some questions pending since the initial report had been addressed, in particular with regard to the law concerning the self-executing and non-self-executing provisions of treaties. While welcoming the adoption by Cyprus of the Convention's definition of torture and its incorporation into domestic law, he wondered whether there were still any provisions of the Convention which Cyprus would regard as non-self-executing.

27. Turning to the issue of police misconduct, he said that the second periodic report dealt extensively with the progress made, particularly through the work and recommendations of the Commission of Public Inquiry. Specific disciplinary action, including criminal prosecution and dismissal, was a clear indication of the Government's commitment. In addition, the Commissioner for Administration was clearly playing a vital role in the enforcement of human rights values in Cyprus.

28. It was commendable that Cyprus had implemented the recommendations of the European Committee for the Prevention of Torture (CPT) concerning the appropriate documentation of detainees, and was considering the use of electronic recordings as admissible evidence. Such simple and cost-effective measures would protect both the individuals held in custody and the police officers holding them.

29. He appreciated the oral clarification of the "certain legal peculiarities" in the case of Mr. Erkan Egmez, to which reference was made in paragraph 43 of the report.

30. There was also, however, the case of Mr. Neeip Saricicekli who asserted that he had been violently arrested and tortured. Given the strong medical evidence, there appeared to be grounds for investigating the matter and he

would like to know whether the accused had been tried on the substantive charge of espionage and the outcome of any such trial, whether the claims of police brutality had been investigated, and what the current status of that case was. He also asked whether the alleged use of electric stun guns in the Limassol police station had been investigated.

31. In conclusion, he complimented Cyprus on the way in which its domestic law was formally structured and applied and on submitting its periodic report within six weeks of the due date, a record achievement.

32. Mr. SORENSEN (Alternate Country Rapporteur), having thanked the delegation of Cyprus for its oral presentation which had greatly facilitated his task, said that he was pleased that the bill to modernize the Mental Patients Law had been passed. Nevertheless, there remained some doubt as to the meaning of a person's confinement "for his own protection" and "protection of the public" as mentioned in paragraph 5, subparagraph (a), of the second periodic report.

33. He also had some questions about the practical aspects of the new Law, such as which persons were qualified to bring a mental patient before the courts, and at what stage psychiatrists became involved in the process. He asked whether the time limit for compulsory confinement would always be two months and whether the patients, or their custodians, had any say in decisions regarding fitness for release from compulsory confinement.

34. Since mental patients were among the most vulnerable members of society, the level of treatment provided to them was highly indicative of the authorities' attitude to social welfare. He congratulated the Government and delegation of Cyprus on their reports which contained some very good elements, including high-quality statistics, and could serve as a model for many countries. He was interested in the composition of the Supervising Committee that had been mentioned in the oral statement and wondered whether non-governmental organizations (NGOs) had any influence on that Committee and whether the patients were represented in it. More generally, he would like to know who selected its members.

35. He did not agree that there was any medical justification for isolating detainees solely on the grounds of HIV or hepatitis B infection. Paragraph 13 of the report alluded to separate and improved conditions for such inmates, but even positive discrimination was still discrimination. Since he firmly believed that the spread of sexually transmitted diseases could be tackled effectively without resorting to isolation he would like to hear the delegation's comments on the view that infected prisoners should be regarded as normal people.

36. In connection with article 3 of the Convention, the Committee had been informed as recently as May 1997 of an individual being returned to Turkey, after being denied consultation with the Office of the United Nations High Commissioner for Refugees (UNHCR), despite the existence of a consistent pattern of gross, flagrant or mass violations of human rights in that country.

37. He welcomed the information that an expert in forensic medicine was to be trained. However, article 10 of the Convention also provided for the education and information of medical personnel regarding on the prohibition of torture and he wondered whether there was any such training in Cyprus.

38. As far as the systematic review of prisons was concerned, Cyprus appeared to be complying with that aspect of article 11 of the Convention, but he would like to know whether the police, interrogation rules and instructions were also subject to systematic national review.

39. In connection with article 14, he asked whether victims of torture were entitled to compensation from the State in the event that the victim was unable to identify the specific perpetrator of the violation. He also asked whether Cyprus provided medical rehabilitation for victims of torture, and whether, in severe cases of torture, they had access to specialized treatment abroad, such as was available at the Athens rehabilitation centre.

40. He drew the attention of the Cyprus delegation to the United Nations Voluntary Fund for Victims of Torture, which was in dire need of funding, and urged the Government of Cyprus to make a contribution to that Fund, if it had not already done so.

41. Mr. ZUPANCIC, referring to the proposed change in the Cypriot law of evidence from the common-law system to the Continental one, said he was concerned about the constitutional preservation of the exemption from self-incrimination privilege, in connection with article 15 of the Convention which proscribed the use of evidence obtained through torture. In addition, he wondered how the change from the one system to the other would be carried out in view of the fact that most Continental countries did not have a separate branch of evidential law. In that connection, he would like to know whether there had been any cases, especially any brought before the Supreme Court, concerning the link between the privilege of exemption from self-incrimination and the rejection of evidence extracted by torture.

42. Mr. REGMI said that the second periodic report of Cyprus had not adhered strictly to the guidelines prescribed by the Committee. In particular, very little information had been provided under article 2, paragraph 1, of the Convention. He hoped that the next periodic report of Cyprus would deal with the implementation of the Convention on an article-by-article basis.

43. The information in paragraph 28 of the report on the conclusions of the Commission of the Public Inquiry concerning complaints of ill-treatment by the police did not appear to give a clear and complete account of the incidence of torture. He would like to have specific information on the number of victims of torture who had received full compensation and redress since the submission of the initial report and what the maximum amount of compensation payable to victims of torture was. Moreover, it was unclear whether the Government of Cyprus had concluded any treaties or agreements with other States parties to the Convention to cooperate in criminal proceedings relating to acts of torture.

44. He also wished to know whether detainees had the right to inform their relatives immediately of their fate, to choose counsel during the preliminary

interrogation proceedings and to choose their own doctors. Did the new mental-health Law contain provisions for the issuing of a certificate of mental and physical fitness before an interrogation began? What was the maximum period of pre-trial detention allowed, and did the legal system in Cyprus include provisions governing solitary confinement and incommunicado detention?

45. In connection with article 11, he asked what arrangements were made by the State to prevent persons in custody from being tortured during preliminary proceedings; what authority was competent to monitor the treatment of persons in custody and ensure prompt and impartial dispensation of justice; and by whom that authority was appointed. If the accused believed that he had been denied his rights, could he appeal to a higher authority?

46. Mr. CAMARA asked what the "legal impediments" were that had prevented the Assize Court of Larnaca from admitting as evidence the videotape referred to in paragraph 30 of the report. The existence of such impediments might well be in conflict with the provisions of article 2, paragraph 2, of the Convention. He would also like to know what the "legal peculiarities" of the case referred to in paragraph 43 of the report were, and whether there was a risk that the complaint might be shelved, in violation of the Convention.

47. The CHAIRMAN asked the Cypriot delegation to describe its country's judicial system. Was one single Attorney-General responsible for the entire territory? As an independent official, how did he reconcile his functions with those of the ombudsman, if such an official existed? Was there any overlapping of their functions, or did each work within a clearly defined framework?

48. He thanked the delegation of Cyprus for its oral presentation and invited it to provide answers, at the Committee's 302nd meeting, to the questions that had been asked.

49. Mr. EFTYCHIOY (Cyprus) said that his delegation would do its best to comply with the Chairman's request.

50. The delegation of Cyprus withdrew.

The meeting was suspended at 11.40 a.m. and resumed at 12 noon.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Report of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1997/WG.11/CRP.4)

51. Mr. SORENSEN said that, on 17 and 18 October 1997, he had attended the meeting of the pre-sessional open-ended working group on the question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in his capacity as representative of the Committee against Torture. The object of the exercise was to create an inspection mechanism similar to that established by the European Committee for the Prevention of Torture (CPT). At the most recent

meeting, substantial progress had been made with the second reading of the draft articles, with agreement reached on all articles other than the crucial articles 1, 8 and 12.

52. Article 1 posed the problem of the right to make a visit, with the representatives of some countries expressing the view that the subcommittee to be established under article 2 should organize missions to States only on invitation, while others maintained that in that case there would be no point in preparing a protocol, the purpose of which was to enable missions to be conducted without invitation.

53. Discussions on the subcommittee's mandate were in their sixth year. There was currently almost unanimous support for the view that, to be effective, the subcommittee must have a mandate enabling it to conduct inspections without invitation; have unlimited access, without prior notification and in privacy, to all persons including detainees, and to all premises and relevant documents; and return to locations already visited if it so desired. Over the years, the number of States resisting that mandate had fallen to about three, and the view was emerging that, while consensus was desirable, there had to be some limit to the concessions made if the subcommittee was to be of any value.

54. At an early stage in the drafting process, some participants had felt that the Committee against Torture should itself conduct the missions. Over the years, the Committee's role in the draft optional protocol had dwindled, the only surviving reference thereto being in article 10, paragraph 1, which empowered the subcommittee to decide to postpone a mission to a State party if that State had agreed to a scheduled visit to its territory by the Committee against Torture pursuant to article 20, paragraph 3, of the Convention.

55. In his own view, the Committee and the proposed subcommittee had nothing in common other than the shared goal of eradicating torture; and he welcomed the fact that member States had come to recognize that bringing the two bodies together could jeopardize the functioning of both.

56. He highlighted some features of the draft articles finalized on second reading. Article 2 provided for the establishment of a subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture to carry out the functions laid down in the Protocol. Article 3 stressed the importance of cooperation between the State party and the subcommittee, which was to be guided by the principles of confidentiality, impartiality, universality and objectivity.

57. Article 4, paragraph 1, provided that the subcommittee was to consist of 10 members, increasing to 25 after the fiftieth accession to the Protocol. It thus differed from the CPT, which consisted of one member per Council of Europe member State, and thus currently had 40 members. Paragraph 2 provided that the subcommittee's members were to be persons of high moral character, having proven professional experience in the field of the administration of justice, in particular in criminal law, prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty. They were to serve in their individual capacity, be independent and impartial, and available to serve the subcommittee

effectively. That final stipulation was important; for he could personally vouch for the heavy demands such appointments placed on members' time, having had to resign his professorship of surgery in order to discharge his duties as a member of the Committee against Torture and of the CPT.

58. Article 5 permitted each State party to nominate up to two candidates, and article 6 provided for their election by secret ballot by the States parties. In the election of the members, primary consideration was to be given to the fulfilment of the requirements and criteria of article 4.

59. Article 6 differed from the CPT mechanism in requiring due consideration to be given to a proper balance among the various fields of competence, as well as to equitable geographical distribution of membership and representation of different forms of civilization and legal systems of the States parties. Consideration must also be given to balanced representation of women and men.

60. Under article 8, members were to be elected for a term of four years; and under article 9, the subcommittee was to meet in camera - another respect in which it differed from the Committee.

61. There had been protracted discussion of article 11, concerning the role of experts in the subcommittee - an issue that had proved a sticking point over the years. There was agreement that missions should be carried out by at least one member of the subcommittee. Nevertheless, in view of the many different categories of premises to be visited, the composition of missions needed to be strengthened through recourse to experts. One country had consistently opposed their inclusion in missions, instead favouring recourse to advisers.

62. Article 11, paragraphs 2 and 3, provided that, in deciding on the composition of the mission, the subcommittee must take into account the particular objectives of the mission; and that it must consult the State party concerned confidentially, in particular regarding the composition and size of the mission other than with regard to the participating members of the subcommittee. It had finally been agreed that the consultation process should be confidential as, if experts risked public rejection by the State party, many would be deterred from volunteering their services. Likewise, on his own proposal, it had been agreed that no reason should be given in the event of an expert's rejection. The original proposal that interpreters should not be citizens of the State visited had, however, been abandoned as impractical.

63. Article 12 provided, inter alia, that, in selecting experts for a mission, the subcommittee must give primary consideration to the professional knowledge and skills required, taking into account regional and gender balance.

64. Lastly, article 13 provided - perhaps optimistically, in view of the high cost of interpretation services - that the expenditure incurred by the

implementation of the Protocol, including missions, was to be borne by the United Nations. That problem needed to be taken into account when selecting the composition of a mission.

65. Mrs. ILIOPOULOS-STRANGAS asked whether a copy of the draft optional protocol could be circulated to the members of the Committee.

66. Mr. GONZALEZ POBLETE said that the attitude of some countries regarding prior consent to visits by missions was totally incompatible with the optional character of the instrument in question. Any country freely ratifying the optional protocol tacitly agreed to accept visits at any time. Countries not willing to accept visits without invitation were free not to ratify the Protocol.

67. Mr. SORENSEN said he fully agreed with that comment, as undoubtedly would the vast majority of the States that had participated in the negotiations over the past eight years.

68. Replying to the question by Mrs. Iliopoulos-Strangas, he said that the draft articles finalized at second reading would be circulated to the members of the Committee as soon as they had been officially adopted by the participants in the working group. Lastly, he said that, subject to his being re-elected as a member, he would be very pleased to continue to represent the Committee in future negotiations concerning the draft optional protocol, if its members so wished.

69. The CHAIRMAN thanked Mr. Sorensen for both his presentation and his offer, and said that all the members of the Committee would no doubt support his candidature.

The meeting rose at 12.30 p.m.